

UNITED STATES BANKRUPTCY COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA
DURHAM DIVISION

In Re:

**Anthony Leigh Clough And Kaci Ferrell
Clough**

Case No. 09-80186
Chapter 13

Soc. Sec. No. xxx-xx-6782 and xxx-xx-1844
Mailing Address: 3033 Ross Road, Durham, NC 27703-

Debtors

MOTION TO MODIFY PLAN

NOW COME the Debtors, by and through counsel undersigned, who move, under authority of 11 U.S.C. § 1329, to modify the Chapter 13 plan in this case, and in support hereof, the Debtors show unto this Court the following:

1. This case was filed on February 4, 2009, with the Chapter 13 plan being subsequently confirmed on May 6, 2009.

2. The Debtors propose to modify the Chapter 13 plan in this case in the following respects:

From: \$1,730.00 per month

To: \$1,730.00 per month through October, 2010, followed thereafter by \$620.00 per month, starting in April, 2011.

3. In addition, the Debtors request a "waiver" to move their Chapter 13 plan payment delinquency to the end of the Chapter 13 plan for payment. As a condition of receiving this waiver, the Debtors agree that, should any subsequent payments be more than thirty (30) days delinquent within the twelve (12) months following the entry of this Order, that the Debtors' case may be dismissed without further hearing by the Court. The Debtors agree that any Order allowing such waiver shall not be *res judicata* as to timely Motions for Relief filed by secured creditors in this case.

4. The changed circumstances that justify the proposed modification are as follows:

- A. The male debtor's employment was recently terminated, and he was out of work for the past 4 months. The male debtor has recently started a new job, but needs to cure his Chapter 13 delinquency.
- B. The debtors have temporarily separated, necessitating the maintenance of two separate households.

5. An Amended Schedule I for the Debtors is attached hereto and is incorporated hereto by reference.
6. An Amended Schedule J for the Debtors is attached hereto and is incorporated by reference. To facilitate the proposed modification, the Debtors hereby surrender any interest they may have in collateral securing the following claims:

Creditor and Claim No.	Collateral
Suntrust Mortgage (claim no.4) (1 st Mortgage)	
CitiFinancial Services, Inc. P.O. Box 70919 Charlotte, NC 28272-0919 (claim no. 7) (2 nd Mortgage)	3033 Ross Road, Durham NC 27703

At the time of the filing of the Debtors' Chapter 13 bankruptcy, the 3033 Ross Road, Durham NC 27703 had a fair market value of \$101,322.60.

The 3033 Ross Road, Durham NC 27703 has depreciated in the amount of \$0.00 since the filing of the Debtors' Chapter 13 bankruptcy.

That, pursuant to *In re Miller* (Unpublished, MDNC 99-81339), the Debtors' Chapter 13 plan has paid approximately \$14,478.93 to Suntrust, exceeding the depreciation on the 3033 Ross Road, Durham NC 27703 in the amount of \$14,478.93.

7. The proposed modification conforms to the standards of confirmation set out in 11 U.S.C. §§ 1322 and 1325.

Appended Application for an Additional Attorney Fee

8. Counsel for the Debtors further applies herein, in accordance with Bankruptcy Rule 2016(b), for approval an attorney fee in the amount of \$250.00 to pay for the reasonable value of the services rendered, and to be rendered, with respect to this motion to modify, including, without limitation, the following:
 - a. Calls from and to the Debtors to discuss changes in their situation which necessitate this motion, to explain the procedures and requirements involved, and to advise the Debtors accordingly; and
 - b. Contact with the Trustee's office concerning the proposed modification; and
 - c. Re-evaluating and recalculating the Chapter 13 plan in this case; and
 - d. Drafting this Motion and Certificate of Service; and
 - e. Service of the Motion on all interested parties, which includes all creditors scheduled in this case, at the expense of the undersigned law firm; and

- f. Filing of the Motion; and
- g. Prospective attendance with Debtors at the hearing upon the motion, if any; and
- h. Prospective drafting and filing of the proposed Order and Deputy Clerk's Certificate of Service; and
- i. Prospective follow-up instructions to client, as will be necessary, following the granting of this motion.

These services were not taken into account in the contract for legal services entered into between the undersigned and the Debtors.

WHEREFORE, the Debtors pray that this Court grant their Motion, and modify the Chapter 13 plan accordingly. In addition, counsel undersigned requests that this Court approve a fee in the amount of \$250.00 to compensate undersigned for the services rendered or to be rendered with respect to this motion, said fee to be paid by the Chapter 13 Trustee as an administrative claim in this case.

Dated: March 16, 2011

LAW OFFICES OF JOHN T. ORCUTT, P.C.

/s Koury Hicks

Koury Hicks
North Carolina State Bar No.: 36204
6616-203 Six Forks Road
Raleigh, N.C. 27615
(919) 847-9750

CERTIFICATE OF SERVICE

I, Koury Hicks, certify under penalty of perjury that I am, and at all times hereinafter mentioned was, more than eighteen (18) years of age and that on March 16, 2011 , I served copies of the foregoing **MOTION TO MODIFY PLAN** by regular first-class U.S. mail, addressed to the following parties:

Richard M. Hutson, II
Chapter 13 Trustee
P.O. Box 3613
Durham, N.C. 27702-3613

Michael West
U.S. Bankruptcy Administrator
P.O. Box 1828
Greensboro, N.C. 27402-1828
Anthony Leigh Clough And Kaci Ferrell Clough
3033 Ross Road,
Durham, NC 27703-

Suntrust
Attn: Managing Agent
BANKRUPTCY DEPARTMENT RVW 3034
PO Box 27667
Richmond , VA 23261-

CitiFinancial Services, Inc.
P.O. Box 70919
Charlotte, NC 28272-0919

All creditors with duly filed claims as listed on the attached Report of Claims Filed at the addresses listed thereon.

/s Koury Hicks

Koury Hicks